IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 639 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DASHRATHBHAI REVIDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner

Mr K G Sheth, APP for Respondent No. 1

MS FARHANA Y MANSURI for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/09/2000

ORAL JUDGEMENT

The petitioner has filed this petition under section 482 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code') challenging the order of process passed on 23.11.1998 by the learned

Judicial Magistrate First Class, Siddhpur in criminal case No.1347/98 for offences punishable under sections 354, 504 of the Indian Penal Code read with section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1986 (for short 'the Act'). The petitioner has contended that the contesting respondent had earlier filed similar complaint before the police and the police investigated the case and has filed report that no offence is made out and therefore, 'B' summary be granted. The learned Magistrate did not consider that aspect of the case and closed the chapter of the said matter seeking 'B' summary and directed to proceed further with the complaint of the contesting respondent in criminal case no.1347/98. That therefore, there cannot be two complaints with respect to the same offence and, therefore, the said complaint being criminal case No.1347/98 be quashed.

2. In this matter, rule was issued. Mr K G Sheth, learned APP appears for the State. Ms.Farhana Y Mansuri, learned Advocate appears for respondent No.2. I have heard the learned Advocates for the parties and have perused the papers.

3. Page no.9 is the complaint being criminal case no.1347/98. It relates to an offence of 8.9.1998. If we turn to the papers commencing from page no.18, they show that a similar FIR was filed by the same informant for the same offence of the same date. Both relate to offences punishable under sections 354 and 504 of the IPC and under section 3(1)(x) of the Act. The date, place and time is the same. Therefore, two separate proceedings have been initiated against the petitioners for the same offence. When the 'B' summary was applied for, the learned Judicial Magistrate heard the matter and passed the order that since the process has been issued in criminal case no.1347/98, it would not be proper to waste time of the court and the said chapter of 'B' summary was treated as closed. That order was dated 28.9.1999. On this aspect of the case, it would be worthwhile to refer provisions of section 210 of the Code which reads as under:

> "210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence:- (1) when in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in

relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

It is very clear that when a complaint is filed and it has been brought to the notice of the Judicial Magistrate that a police investigation is going on in respect of the said offence, then in that event, the learned Magistrate is required to stay the proceedings of such enquiry or trial and is required to call for the matter from the Police Officer conducting such investigation. In the present case, this procedure has not been followed. Subsequent thereto the said section 210 of the Code, it further shows that the procedure to be adopted by the learned Magistrate in case chargesheet is filed and cognizance is taken on the basis of the said chargesheet filed under section 173 of the Code. Sub-section (3) of section 210 of the Code further shows that if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, then procedure is to be adopted as stated in the said sub-section. This shows that there is complete provision in section 210 of the Code which is to be followed by the learned Magistrate with respect to the complaint as well as FIR before the police filed in respect of the same offence. Here the facts are admitted. The offence in the complaint as well as in the FIR is one and the same. There is no dispute about the same. In that view of the matter, I am of the view that the learned Magistrate was required to follow

the procedure laid down in section 210 of the Code referred to hereinabove. This has not been done and, therefore, appropriate directions are required to be given to the learned Judicial Magistrate for following the procedure laid down in accordance with law. In view of the aforesaid this petition is partly allowed. The learned Judicial Magistrate First Class, Siddhpur is directed to stay further proceedings of criminal case no.1347/98 and hear and dispose of the report of the police Investigating Agency. If the learned Magistrate accepts the said police report, after hearing the necessary parties further necessary action may be taken

report, then also further necessary action will be taken by him and appropriate order will be passed in accordance with law.

4. With this direction, this petition is ordered to be disposed of. At this stage, learned Advocate for the petitioner states that if the matter goes against the present petitioner then his right to challenge the same may be kept open. If the matter ultimately goes against the petitioner, it will be open to the petitioner to file appropriate proceedings against the said orders.

Rule is made absolute to the aforesaid extent.

7.9.2000 [D P Buch, J.]
msp.